



STATE OF DELAWARE  
DEPARTMENT OF AGRICULTURE  
DELAWARE HARNESS RACING COMMISSION  
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## Minutes of the Meeting Held June 9, 2009

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The Delaware Harness Racing Commission met for a meeting at Harrington Raceway, Harrington, Delaware at 10:15 a.m. on Tuesday, June 9, 2009.

### Commission Members Present

Beth Steele, Chairman	Mary Ann Lambertson, Commissioner
Robert B. Brown, Commissioner	Kenneth Williamson, Commissioner

### Others Present

Andrew Kerber, Deputy Attorney General	Brian Manges, Investigator
Charles Lockhart, VP, Horse Racing, D. Downs	Scott Egger, Presiding Judge
John Hensley, Sr. Dir., Horse Racing, D. Downs	Dr. Annie Renzetti, Chief DHRC Veterinarian
Salvatore DiMario, Executive Director, DSOA	Dr. Emily Galloway, DHRC Veterinarian
James Boese, General Manager, HRI	Hugh Gallagher, Administrator
Karen Craft, Facilities Manager, HRI	Jo-Ann Price, Paralegal
Judy Davis-Wilson, DSBF	Mark Davis, Principal Deputy Assistant
Robert Willard, DAG	Nola Leager, horsewoman
Juli LaBadia, Court Reporter, Wilcox & Fetzer	JoAnn Looney-King, horsewoman
Ed Kee, Secretary of Agriculture	Ollie Ervin, horseman
Brewer Adams, Owner/Trainer/Driver	Don Adams, horseman
Cynthia Adams, horsewoman	B.A. Davis, Manager, Licensing Office
John Wagner, horseman	Mark Waterman, horseman
George Dennis, horseman	James King, Jr., horseman
Brewer Adams, horseman	

### CALL TO ORDER

Chairman Steele called the public session of the meeting to order at 10:15 a.m. and welcomed those in attendance.

### APPROVAL OF MINUTES

Commissioner Brown moved to approve the May 12, 2009 DHRC Minutes as written. Commissioner Williamson seconded. The Motion passed unanimously.



### NEW BUSINESS

#### ✓ *Rule 7 (from Rules Committee)*

Mr. Gallagher reported that New Jersey, Pennsylvania, and Maryland have not adopted the new RCI rules; they still allow one handed whipping at least to the 7/8<sup>th</sup> of the race. Our rule is presently consistent with neighboring jurisdictions. There is no reason to adopt the RCI rule of keeping a line in each hand. After consideration, Commissioner Williamson made a Motion in support of

the proposed 7.6.13.14 language; Commissioner Brown seconded; and the Motion passed unanimously. These proposed changes will be published for public comment.

#### ✓ *Steroids*

Mr. Gallagher reported there will be a steroids meeting in Baltimore, Maryland. An announcement from RMTTC as to its recommended blood levels is anticipated soon after this meeting. Also, Michigan's April 1<sup>st</sup> press release on its rule

includes an advertising and a grace period before its implementation. He suggested our steroids rule should include similar language.

## REPORTS

### ▪Administrator's

None; included in the above.

### ▪Chief Veterinarian's

Dr. Annie Renzetti reported things are going well; all whipping incidents have been reported and handled.

## PUBLIC COMMENT

None offered.

*Break:* At 10:20 a.m. a break was called, as Commission Counsel was needed to lead any further proceedings.

## OLD BUSINESS

### ✓ *DSBF 3yo Filly Trot Final & Consolidation Redraw Discussion*

At the May DHRC meeting, Messrs. Waterman and Ervin testified they did not receive proper notice of the draw. Today's discussion was called to hear from all the horsemen who protested the redraw. Present today are: Ollie Ervin, James T. King, Jr., Nola Leager, John Wagner and Mark Waterman. Mr. Kerber read USTA Rule 14(n), which was relied upon to make the decision to redraw, based upon the evidence before the Administrator at the time. We have conflicting facts; that's why we're here today. *Mr. King* testified he felt he'd done everything he was supposed to; he saw the notice posted behind glass and didn't feel the horses that were let back in did what they were supposed to. He asked Mr. Egger if there was anything wrong with the first draw. Mr. Egger responded that his decision was made with the information he had at

the time, and given the same information, he would make the same decision again. Mr. King stated DSBF rules should supersede USTA rules, because they are for Delaware races and asked Mr. Gallagher if the DSBF rules are the guidelines for those races. *Mr. Gallagher* responded that they are the guidelines, but there is also reference to the USTA rule; all the rules that apply had to be considered, and were during the conference call between Mr. Kerber, himself, Ms. Davis-Wilson and Ms. Price. Mr. Wagner had nothing to add. Messrs. Ervin and Waterman were concerned about the refund of their appeal bonds; Mr. Kerber said portions could be refunded after court reporter costs were paid. *Ms. Noel Leager* said the condition sheet was on the internet that morning before the draw, but did not see it the night before. The sheet was posted on the inside of the glass at the Race Office and locked; it was there that night. It's not unusual for stake draw sheets to be held at the end of the meet and change. If you have been in the business, you know to check. That's the way it's always been posted. If you are too late, it's your tough luck. It is the trainer's responsibility to find out when they're drawn. All trainers of the colt division saw it and all trainers of the filly division saw it. When you finish your stake race, you find out when the next elimination is. *Mr. Hensley* testified that condition sheets are first posted in the Race Office - behind the office, copies go to the paddock and extras are made. It was out prior to the elimination race. There is no rule currently that says anything about posting a sheet on the internet. The internet was posted the day of the

elimination, almost 21 hours before the draw. Their internet provider said it was posted at 3:15 p.m. *Mr. Ervin* testified the box was empty on Thursday night. They are usually drawn on Saturday —and did the whole meet, then they were going to be closed, so they drew on Thursday. He's never been to a track that did that. He only races on stake races; and had no idea they were going to draw on Thursday. On Thursday, he called the judges around 5:00 p.m., who said the race had already been drawn. They said to come over and talk about it. The he filed a protest. *Chairman Steele* said the Race Secretary's Office could be called; it's open at 10:00 a.m. If you are out of state, you could make a long distance call. Our job is to make sure that it is posted the same way every time. *Ms. Davis-Wilson* did not have enough drawn into the first race for a consolidation. There were 10. (Someone else said 15 total.) She tells horsemen they must refer to the schedule the track posts at the time. If the DSBF rules don't specifically address a rule, they refer to DHRC's, if it's not there, then they refer to USTA rules. *Mr. Kerber* said the internet does matter; the fact that the track does publish and the horsemen rely on that and are entitled to rely on that. They should be publishing it. *Mr. Boese* said there is no Commission rule telling them to publish it on the internet; no one has ever told Harrington Raceway that they must publish on the internet. *Mr. DiMario* described where the sheets are posted at the racetrack. *Mr. Waterman* testified the condition sheet was not up on the night of the elimination on the internet at approx. 6:30 p.m. and no announcements were made in the paddock. *Mr.*

*King* said it was announced in the paddock that night, but half the time you can't understand what is being said. *Ms. Looney-King* testified that she hasn't been in the business very long; but said she'd never heard of such a thing. She asked who jumped the gun and made this decision so fast. Mr. Kerber responded that his advice is that the USTA Rule 14(n) applies; the question is a factual one. Two horsemen came in and the notice was not up, Mr. Hensley said it was; Mr. Ervin said there were none in the box on Wednesday night, and he couldn't see one posted as gentlemen were blocking his view. Others have testified it was there in a timely manner. Mr. Waterman saw an internet notice at 6:30 p.m. and Mr. Hensley's testimony conflicts. He said he will advise the Commission that if in fact the tracks are posting on the internet and the horsemen are relying on it – we need to either make a rule, or put something on the sheet that says do not rely on this. Until we get a clearer rule, the Commission has to consider all these facts. Commissioner Williamson expressed this wasn't normal procedure; it didn't seem logical for a stake race to have a one day box. Mr. DiMario explained how the draws change due to Easter and Christmas, and how at the end of a meet the draws may change to accommodate the days which must be raced at the end of the schedule. Mr. Kerber said the DHRC could reserve its judgment and announce it at the next meeting.

**Break:** At 11:55 a.m. a 10-minute break was called

**Call to Order:** At 12:10 p.m. the meeting was called back to order.

Upon resumption, the Commission asked for input from the people who made the decision. Mr. Gallagher testified the elimination was on a non-betting race on Wednesday, and the draw was on a prior Saturday. Two people testified at the last meeting had sought information, and he could not find enough to drop it. Thursday the race was drawn, a variance on the normal draw schedule, because the track had posted a dark day on Saturday. He did not see where the Race Office would be closed, as the normal off hours were posted, including that Saturday. He received a call at DDA around 1:00 on Thursday from Mr. Waterman who was upset; he'd had no info, and had called the track, who advised him to call DSOA, Mr. DiMario advised him to get an attorney and protest it by seeking a redraw, since he was prohibited from racing. He did not hear from Mr. Ervin. The Judges tried to deal with this, amongst their other duties of 15 races. They tried to handle this matter the best they could. The protest has to do with eligibility. The appeal was that at least two horsemen felt they had not been given clear notice and could not find a draw schedule, plus they'd made payments to enter the stake race. We had a conference call Friday about 10:00 a.m. with Ms. Davis-Wilson, Mr. Kerber, and Ms. Price. Many people in this matter have done the right thing. It's difficult, and not a happy ending. Our purpose was with time constraints, a program had to be printed, etc. Had it been just our rulebook there would've no redraw.

Since there was a USTA provision and it said "...in the case of early closers of more than \$10,000 and stake and futurity races, the race SHALL be redrawn. Decision was to redrawn. Based on complaints, these horsemen had every intention to enter their horses. There is a system that horses collect points and with enough points can drop into a final for \$100,000 or a consolation race for \$20,000. (By the way, Mr. Waterman won the race, and based on his conversation Friday, could not find a condition sheet.) Mr. Kerber then summarized that the DSBF incorporated the USTA rule. Rule 14(n), which applies, Mr. Waterman and Ervin testified; and other horsemen testified notice was properly given. Mr. Gallagher stated everyone who testified was correct, based on their belief Commissioner Brown made a Motion to have the redraw stand, Commissioner Williamson seconded, and Commissioner Lambertson agreed. Chairman Steele opposed.

## NEW BUSINESS

### ✓ *Appeal Determination* – *Brewer Adams*

At 12:27 p.m. Robert Willard appeared for the State, Brewer Adams was *pro se*. A court reporter took a verbatim record. The appeal involved three positive tests for Buprenorphine for three different horses in two races. His penalty was a loss of purse, a \$3,000 fine, and 270 days suspension. At 1:35 p.m. the record was closed. After deliberations, at 1:43 p.m., Commissioner Williamson moved to uphold the judge's penalty exactly as given; Commissioner Lambertson seconded, and the Motion passed unanimously.

### ✓ *House Bill 194 proposed language*

Mr. Gallagher reported that Mark Davis asked for DHRC comments; Mr. Kerber made some meritable notes on it; and Mr. Boese was given a copy in case they wanted to comment. Mr. Kerber explained that the tracks are concerned with the bill in general. In Section 3 they tried to strike the existing 4819(b) of Title 49. It looks like it will grandfather the zoning and prevent them from offering video lottery (January 1993.) to Del Pointe. This is strictly a legal matter and takes away from what they are entitled to. He has a legal problem and has already expressed this to Mr. Davis. Mr. Gallagher said it seems to be a gaming bill, the synopsis gives him great concern; it would give many people licenses to become video lottery agents. Mr. Kerber agreed it needs work, but added the synopsis would not change the language of the bill and has no legal effect on it, but it needs work and we should make sure it is accurate before it moves forward. Chairman Steele is concerned that Del Pointe came before the Commission and misrepresented their thoughts, and now all of a sudden everything will be changed. Maybe the tracks we have will not be well served. This gives her heartburn. Mr. Lockhart said her recollection was correct; they said they didn't want slots, etc. Mr. DiMario added that they've lied to everyone. The only thing that they've done consistently is lie. The DSOA opposes the expansion; it will dilute the purses, they won't be able to race quality race horses, and it will reverse the state of the industry. The DSOA will testify at public hearings and will

lobby legislators individually. Mr. Kerber advised the Commission if it wanted to assist in that effort, there could be a Motion to do so. Mr. Gallagher clarified that this Bill was sent to us by Mark Davis; the appropriate channeling is to present DHRC's opinion to him and Secretary Kee. Chairman Steele added if they don't want to make a statement as a Commission, it should be up to them individually to make their opinions known. Commissioner Brown said he's heard comments from Rickman that he wants Harrington Raceway to go under. He said he personally will sit back as neutral, with all the problems with the economy Del Pointe might produce jobs. Mr. Boese asked if it would produce as many jobs as it did for Harrington's extension. He thought 400-500 jobs for the original construction would be stretching the estimate. Mr. Lockhart added that Mr. Rickman applied for 800 machines and he has not been given that license. We will end up with a dying or decimated industry. Chairman Steele summarized by saying she would put together a letter and see which Commissioners would be willing to sign it.

### **ADJOURNMENT TO EXECUTIVE SESSION**

At 2:06 p.m., Commissioner Brown moved to adjourn for lunch with the Executive Session to follow to discuss personnel issues. No other items for public comment are on the agenda. Commissioner Williamson seconded, and the Motion passed unanimously.

### **RESUME PUBLIC SESSION**

At 3:29 p.m. the public session resumed to discuss the following:

#### ✓ *DSBF Redraw*

Mr. Kerber will prepare a written decision for the DHRC to sign.

#### ✓ *Harmon v. State*

#### *Answers to Interrogatories:*

Commissioner Williamson made a Motion to accept the Answers to Interrogatories as written, Chairman Steele seconded, and the Motion passed unanimously.

#### *Executive Session Minutes:*

Commissioner Lambertson moved to release the pertinent Executive Session Minutes; Commissioner Williamson seconded; the Motion passed unanimously.

### **UPCOMING EVENTS**

#### **DHRC Meeting**

08/11/09 – 10:15 a.m.,  
Harrington Raceway

#### **Rules Committee**

08/04/09 - 10:15 a.m. DDA,  
Secretary's Conference Rm.

### **ADJOURNMENT**

At 3:36 p.m., having no further business, Chairman Steele moved to adjourn, Commissioner Lambertson seconded, and the Motion passed unanimously.



